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Public Order Legislation

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Use of Force

Crimes Act - Section 462A: - Use of Force

A person may

Use such force not disproportionate to the objective as he/she BORG to be necessary to

- prevent the commission, continuance or completion of an indictable offence; or
- to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.



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Indictable offences

- **Affray** – unlawful fighting/violence or force used against another. A bystander of reasonable firmness, if present, reasonably likely to be terrified
- **Riot/Rout/Unlawful assembly** – Violent disorder, repeal of the common law offences. 6 or more persons use/threaten unlawful violence with common goal, conduct of them causes injury or damage to property
- **Intentionally/Recklessly Cause Injury**
- **Criminal Damage**
- **Assault/Resist Emergency Worker - s31 Crimes Act**
 - assaults or threatens to assault, resists or intentionally obstructs an EW on duty, knowing or being reckless as to whether the person was an EW.



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Breach of the Peace – Common Law



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Definition

- Whenever **harm** is actually done or sought to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance”

(R v Howell [1981] 3 All ER 383)

- **BoP is not a criminal offence – cannot arrest a person for BoP.**



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Reasonable Actions

- Breach of Peace must be imminent or actually occurring
- Power to detain or remove persons – metres and minutes, not kilometres and hours.
- Power to remove items (temporarily)
- Power to give directions (protest from given location, cease activity, etc)
- No explicit power to use force, however can do what is reasonable to prevent BoP from occurring or continuing. Entire context to be considered
- BoP works with the co-operation of the person. No cooperation – consider resist/hinder EW.

Video UPF Richmond



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Summary Offences Act

Move On Powers



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Section 6 - Direction by police to move on

(1) MOPF **may** give a direction to a person/s in a public place to leave public place (or part of public place)

If the member suspects on reasonable grounds that—

- The person/s are breaching, or are likely to breach the peace s6(1)(a)
- The person/s are endangering, or are likely to endanger, the safety of any other person s6(1)(b)
- The behaviour of the person/s is likely to cause injury to a person or damage to property or is otherwise a risk to public safety s6(1)(c)

(2) – Direction may be given orally

(3) Direction to not return to the public place for up to 24 hours



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Restrictions

- (5) This section does not apply in relation to a person who, whether in the company of other persons or not, is—
- (a) picketing a place of employment; or
 - (b) demonstrating or protesting about a particular issue; or
 - (c) speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue.



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Common Offences

- Obstruct roadway
- Criminal/wilful damage
- Weapons offences
- Resist/hinder
- Affray
- Cruelty to animals – police horses
- Lock-ons/trespass/besetting premises
- Offensive language/threatening words etc
- Summary and indictable assaults
- And so on.



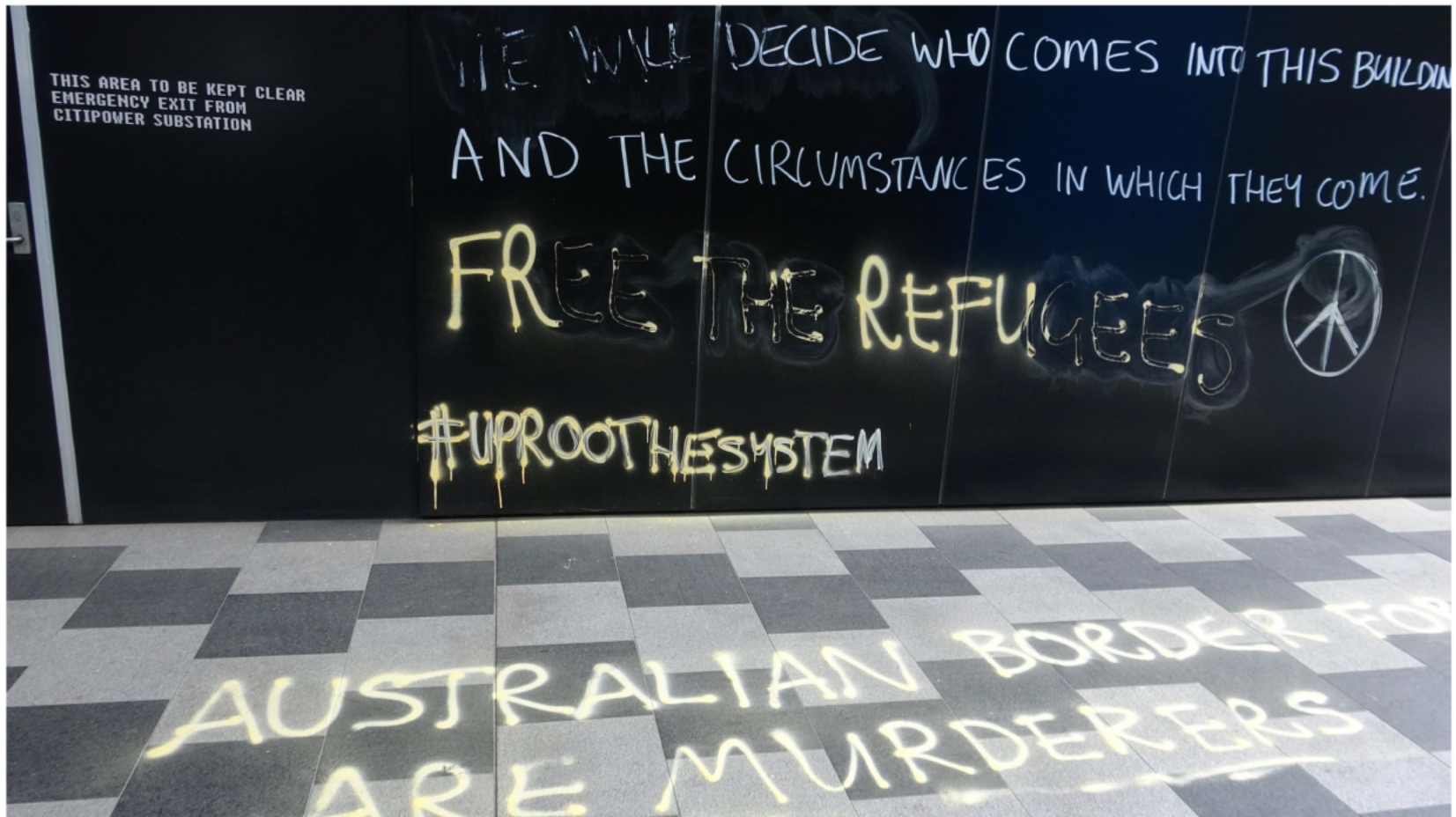
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Discussion



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Mark Graffiti

Graffiti Prevention Act, 2007, Sec 5

Used for putting up a graffiti tag, drawing or etching or otherwise defacing property. The defacement must NOT be readily removable by wiping with a dry cloth.

The owner or representative must have given consent prior to the graffiti being done, not during or after.

NOTE: this is a summary offence, no power of arrest unless CAPS applies.

5 Marking graffiti

A person must not mark graffiti on property if the graffiti is visible from a public place unless the person has first obtained the express consent of the owner, or an agent of the owner, of the property to do so.

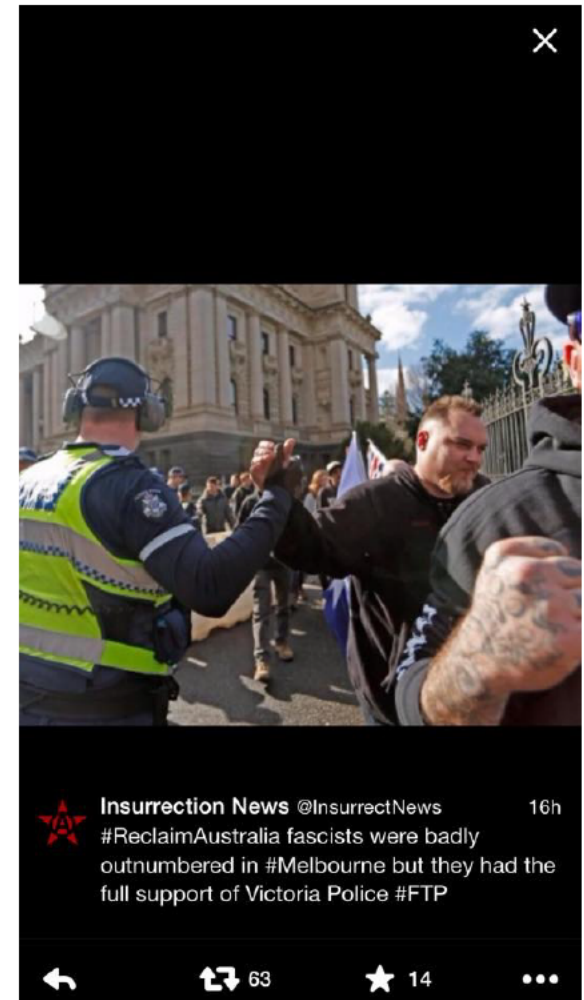
Penalty: Level 7 imprisonment.



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Risks and Issues

- Civil suits re excessive use of force, misapplication of force
- Charter of Human Rights and Responsibilities Act concerns
- Professional Standards Command complaints
- Media (Print, TV and social media)
- Lack of action re low level offending



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Control of Weapons Act – Declared Area searches



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Operation OMNI

- Control of Weapons Act 1990 allows for CCoP to declare an area as either a “planned” or “unplanned” designated area.
- CCoP has delegated that power to all Assistant Commissioners of Police (includes Acting A/Commissioners)
- Allows a MoPF to exercise limited search powers within that designated area – person/vehicle/thing
- Area must be no larger than reasonably necessary to allow effective response to threat of violence or disorder
- Duration must be no longer than reasonably necessary and cannot exceed 12 hours
- Test for the CCoP is one of “may determine that the likelihood of violence or disorder involving the use of weapons will recur even if that likelihood is less than more likely than not”.



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Planned

- Section 10D allows for the CCoP to declare an area to be a designated area if satisfied that either –
 - More than one incident of violence or disorder has occurred in that area in previous 12 months involving the use of weapons; or
 - An event is to be held in that area and incidents of violence or disorder involving weapons have occurred at previous occasions of that event; And
- There is a likelihood that the violence or disorder will recur.
- Cannot have a subsequent “planned” in the same location until 10 days have elapsed from the end of the period.



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Unplanned

- Section 10E allows for the CCoP to declare in writing an area to be a designated area if satisfied that –
 - There is a likelihood that violence or disorder involving weapons will occur in that area during the period of intended operation; and
 - It is necessary to designate the area for the purpose of enabling police officers to exercise search powers to prevent or deter the occurrence of violence or disorder involving weapons.
 - Nil restriction on frequency of “unplanned” provided grounds exist.



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Powers

- s10G – A MoPF may, without warrant, stop and search a person or thing under their control for weapons, if the person/thing is in a public place within the designated area
- Search must be the least invasive search that is practicable in the circumstances.
- Schedule 1 states search may be done initially by a electronic metal detection device, may include requesting person to turn out pockets/bag etc, pat down area of pockets.
- If as a result of an initial wand or pocket pat down search, MoPF considers that the person may be concealing a weapon, a MoPF may conduct a further search – pat down of all outer clothing/removal of outer layer etc.



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MoPF Obligations

- Charter of Human Rights and Responsibilities Act 2006 applies.
- Search subjects must be selected at random
- s10I requires MoPF to advise intended subject that he/she intends to search the person, and that they are authorised to do so.
- Must give/offer the subject a search notice that advised
 - that the subject is within a public place within a designated area, and
 - that a declaration is in force under s10D or s10E, and
 - MoPF are empowered to search the person/thing
 - Offence to obstruct or hinder the search.



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Obligations (cont)

- Must provide name, rank and place of normal duty if asked by the subject (in writing if asked)
- No power to require name and address of subject **unless an offence is detected**
- If subject refuses to allow a search – consider obstruct/hinder provisions.
- Must not detain a subject for a period longer than reasonably necessary to conduct a search of person/thing
- CCoP must report to Minister number of searches conducted under s10G



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Major Sporting Events Act 2009

DIRECTION TO LEAVE - (MSEA SECTION 83)

Authorised officer (includes MOPF) may direct a person to leave and not re-enter or not to enter an event venue or an event area if the authorised officer believes on reasonable grounds that the person has committed an offence against sections (marked ^ above), and has informed the person that the officer has formed the belief referred to above, and has, prior to making the direction, requested that person to leave and not to enter the event venue or event area and that person has refused to leave or has entered.

A direction (above) must specify that the direction applies for a period of 24 hours, and may be given orally, and / or in writing served personally on the person to who it applies.

DIRECTION TO LEAVE – DISRUPTIVE BEHAVIOUR (MSEA SECTION 84)

(1) An authorised officer may direct a person who is in an event venue or event area to leave the event venue or event area and not re-enter the event venue or event area for a period of 24 hours if the authorised officer believes on reasonable grounds that—

- (a) The person is disrupting or interrupting any match, game, sport or event organised by the event organiser; or
- (b) The person is engaging in conduct which is a risk to the safety of that person or other spectators; or
- (c) The person is causing unreasonable disruption or unreasonable interference to spectators of the event or persons engaged in the conduct or management of the event or event venue.

(2) An authorised officer who is a member of the police force may require a person who has been given a direction under subsection (1) to give his or her name and address to the officer.



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Types of Offences

- Offence to possess lit distress signal or firework
- Offence to possess unlit distress signal or firework
- Offence to throw lit distress signal or firework
- Offence to throw or kick projectile
- Bring in or possess alcohol not purchased at event
- Entry to sporting competition space
- Offence to obstruct view of seated person
- Offence to damage or deface
- Offence to enter venue without a ticket or authority



Southern Cross 26012016.mp4



Flares West Syd Members 6-02-16.wmv



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Policy and Guidelines

- VPMG – Breach of the Peace
- VPMG – Move on Powers
- VPMP – Death and Serious injury incidents involving police
- VPMG – Operational debriefings
- VPMG – Police attendance at events
- VPMG – Crowd Control
- VPMG – Operational safety and equipment
- VPMG – Recording Use of Force
- VPMP – Public Order



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Questions...



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